

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 07-0157 and AF 09-0688

IN RE PROPOSED RULE
CHANGES TO THE MONTANA
RULES OF CIVIL PROCEDURE IN
THE MONTANA RULES OF
PROFESSIONAL CONDUCT TO
ENCOURAGE LIMITED SCOPE
REPRESENTATION [LSR] IN
MONTANA

WRITTEN COMMENTS

SUBMITTED BY

MONTANA LEGAL SERVICES
ASSOCIATION

FILED

JAN 04 2011

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Klaus D. Sitte, former executive director of Montana Legal Services

Association, submits these comments in support of the proposed changes on behalf of the MLSA Board and staff.

By way of background, I have been involved in access to justice issues since 1973 when I became a staff attorney for MLSA. I currently serve on the Montana Supreme Court's Equal Justice Task Force and the State Bar of Montana's Access to Justice Committee. Both how and what I practice today bears little resemblance to the law practice I entered nearly 40 years ago. Mandatory disclosure of information, the modern rules of evidence, revised civil procedure rules and computer technology have greatly altered the practice of law. The changes are neither good nor bad – just different. Even

the Rules of Professional Conduct, by which the practice is ethically governed, have changed substantially from the Canons of Professional Ethics. Not surprisingly, the profession has adapted remarkably. The practice of law will, no doubt, adapt to these proposed LSR changes.

Some comments in opposition to the proposed rules focus on the potential harm to unsuspecting clients from unscrupulous lawyers. It is suggested, by some commenters, that the current rules already permit limited scope representation. Adopting these rules, it is argued, will create an undefined slippery slope from which the profession cannot ethically recover and unwary consumers remain unprotected. Limited scope is equated with substandard legal assistance. With all due respect to those assertions, staff and Board of MLSA ardently disagree.

Thousands of clients in Montana, and hundreds of thousands nationwide, have received limited scope representation for decades. The advice and counsel these clients have received has been professional, competent and ethical. These legal services have been delivered by thousands of legal aid attorneys throughout the country. Merely because such services were limited in scope does not mean they were substandard.

[Nor does the fact that they were provided free of charge to the consumer have a bearing on their quality.]

While limited scope representation may have reached its present importance and prominence because of economic considerations, the concept is not novel, unique or new. Few practicing attorneys draft contracts for deed, powers of attorney or even wills, as was the predominant practice a few short decades ago. Allowing consumers to choose the level of legal assistance necessary has enhanced access to justice. Lawyers do not abrogate the duty to the profession or to our citizens by providing consumers more choices.

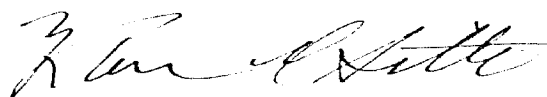
Montanans who live in poverty may find benefit in the proposed LSR rules, it is true. But the Working Group which first proposed the rules changes did not think to support primarily low income citizens. It would be wrong to create a different standard of access for those who have means than for those who have none. Instead, the proposed LSR rules are intended to expand access to the justice system for everyone. Naturally, since other states, bar associations and courts have grappled with this issue long before Montana, seeking guidance and counsel from those out-of-state sources was appropriate. Ascribing anything less the highest standards and honest

motives to this Working Group would be misguided. No one on the Working Group was unduly influenced by considering information from other states. Indeed, some state models were rejected by the Working Group as unsuited to Montana's legal profession.

The result is a set of proposed LSR rules that reflect Montana and Montana's unique brand of lawyering, in this state so large with so few attorneys. The rules were designed to protect the consumer of legal services and to provide guidance to attorneys who choose to practice LSR. Like all rules, there will be those who seek to bend them and even those will ignore them entirely. Nevertheless, these rules will serve as a solid foundation upon which to build best practices and court protocols.

The staff and Board of MLSA strongly support the proposed LSR rules.

Montana Legal Services Association
211 North Higgins Avenue, Suite 401
Missoula, MT 59802



By: _____
Klaus D. Sitte
Litigation Director